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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 18-0097 MMC
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORDANUM
v.)	
)	Date: April 24, 2019
JOEY WONG HERNANDEZ,)	Time: 2:15 p.m.
)	
Defendant.)	Hon. Maxine M. Chesney

I. INTRODUCTION

Defendant Joey Wong Hernandez exploited numerous teenage girls that he met online, lured into sexual relationships, and filmed engaged in sexual conduct. His pattern was fairly consistent: Hernandez met underage girls through social media, lied about his age, met his victims in person, began sexual relationships with the girls, and then filmed the girls as they had sex with him. He took some girls to hotel rooms; he brought others to his house or had sex with them in his car. When two of the girls asked Hernandez to delete the videos he took, Hernandez threatened the girls, claiming he would post the images online.

Hernandez methodically catalogued his sexual exploitation. He saved images and videos of each girl in separate electronic file folders —each folder titled with the girl's name and her age when

1 they met.

2 And his sexual interest in children did not end there. Hernandez possessed almost one terabyte
3 of child pornography on various electronic devices. One hard drive alone contained over 5,700 images
4 of child sexual abuse. On at least three occasions, Hernandez shared videos containing child
5 pornography with a group of approximately forty individuals through a social media application.

6 Taken together, Hernandez's continual and exploitative conduct requires a considerable custodial
7 sentence. This Court should sentence Hernandez to 210 months' imprisonment, followed by ten years
8 of supervised release.

9 **II. FACTUAL BACKGROUND**

10 The government agrees with the factual recitation in the Presentence Investigation Report
11 ("PSR") prepared by the U.S. Probation Office ("Probation") and encourages the Court to adopt it.
12 Supplementing the facts in the PSR, the government below highlights the experiences of particular
13 victims which illustrate the extent of Hernandez's exploitation.

14 **A. Overview**

15 Hernandez preyed upon young girls and taped them engaged in sexual conduct. Through various
16 online social media applications, Hernandez met underage girls, primarily 14-15 years old. (PSR ¶¶ 25,
17 28.) In several instances, he initially told the girls that he was also of high school age. (PSR ¶ 28.)
18 He'd ask the girls to send him sexually explicit photographs. And then he'd meet the girls in person,
19 engage in oral and vaginal sex, and tape it. (See PSR ¶ 28.) Hernandez stored the images and videos in
20 curated file folders on his computer. (PSR ¶¶ 26-27.) He titled each folder with the girl's name and, in
21 parentheses, the girl's age. (*Id.*) To date, law enforcement has identified nine underage victims. (*Id.*)

22 **B. Minor Two**

23 In 2016, Hernandez met a 14-year-old girl, identified in the Indictment as Minor 2, through an
24 online dating website, meetme.com. (See Declaration of Sailaja M. Paidipaty ("Paidipaty Decl."), Ex.
25 A, Reports of Investigation at JH-000051.¹) He claimed he was 17 years old. (*Id.*) The two began

26
27 ¹ The Declaration of Sailaja M. Paidipaty is being filed concurrently with the government's
28 sentencing memorandum. As part of the criminal investigation, a forensic interviewer with Homeland
Security Investigations met with Hernandez's victims. These interviews were video recorded and
provided to the defense pursuant to a protective order. Because the interviews total almost one dozen
hours of video footage, the government is not submitting them for the Court's review prior to
USA SENTENCING MEM.

1 chatting online regularly. (*Id.*) In February 2016, the two met in person for the first time at a park near
2 Minor 2's home. (*Id.*) That same day, Hernandez took Minor 2 to a hotel where they engaged in both
3 oral and vaginal sex. (*Id.*) Hernandez filmed their sexual activity, telling Minor 2 that he wanted to
4 have it when he returned home. (*Id.* at JH-000051-52.)

5 One week later, Hernandez took Minor 2 to a different hotel. (*Id.*) About one month later, they
6 went to yet another hotel. (*Id.*) On all of these occasions, Hernandez had sex with Minor 2, and she still
7 did not know that he had lied about his age. (*See id.* at JH-000051-53.) It was only later, once Minor 2
8 believed she was in a romantic relationship with Hernandez, that she learned the truth – that Hernandez
9 was 28 years old, not 17. (*Id.* at JH-000053.) But by that point, Minor 2 was convinced that the two
10 were in a legitimate relationship. Recognizing his power over Minor 2, Hernandez asked the girl to send
11 him sexually explicit photographs. (*Id.* at JH-000055.) On one occasion following a fight, Minor 2 told
12 Hernandez that she would do anything for him. (*Id.*) He solicited more pornographic images of her.
13 (*Id.*) According to Minor 2, Hernandez directed her on what to send. (*Id.*) He asked for photos of her
14 masturbating herself. (*Id.*) Hernandez reciprocated by sending Minor 2 videos of him masturbating.
15 (*Id.*)

16 Throughout this time, Hernandez knew Minor 2's age. In fact, Hernandez took efforts to
17 confirm her age. Hernandez saved a photograph of Minor 2's high school identification card in the file
18 folder on his computer labeled with Minor 2's name. (*Id.* at JH-000054.)

19 Hernandez's exploitation of Minor 2 did not end after his arrest. In November 2017, state law
20 enforcement arrested Hernandez after finding him with another underage girl (Minor 1 in the
21 Indictment). (PSR ¶ 21.) Even after his arrest, Hernandez continued soliciting Minor 2 for nude
22 pictures. (*Id.*) Hernandez told Minor 2 he missed her and wanted pictures to masturbate to. (*Id.*)

23 Tragically, Minor 2's involvement with Hernandez was not the first time a male took advantage
24
25 sentencing. Instead, the government is providing the interview summaries drafted by the case agent
26 (who observed the interviews in real time from a nearby room). The summaries were previously
27 produced to the defense, as well as Probation. Should the Court want to review any of videotaped
28 interviews, the government can provide those materials.

Additionally, the individual identified as Minor 2 in the Indictment is referenced as "Minor Victim 4" or
"MV4" within the Reports of Investigation.

of her. Minor 2's mother informed law enforcement that Minor 2 was molested previously and suffered considerable trauma both from the molestation itself as well as the protracted legal battle that occurred afterwards. (*Id.* at JH-000060.)

C. Experiences of Other Victims

The experiences of Hernandez's other minor victims are similar to those of Minor 2. Hernandez met all but one girl in person. He had sex with the girls on multiple occasions and filmed those encounters. Below, the government provides a brief summary of Hernandez's predatory actions with some of the girls (in-depth descriptions of all of the victim's experiences are recounted in the case agent's reports):

- Minor Victim 2 ("MV 2")² – MV2 met online through a social media application. (*Id.* at JH-000140.) Hernandez asked MV2 to send him pornographic photographs of herself. (*Id.*) MV2 did not want to send the photographs, but felt compelled to. (*Id.* at JH-000140-41.) Afterwards, regretting the choice, MV2 asked Hernandez to delete the images. (*Id.* at JH-000141.) When MV2 threatened to tell someone about the images, Hernandez said he would hurt her and post the pictures all over her school if she went to the police. (*Id.*) Similar to Minor 2 of the Indictment, another man in MV2's life sexually molested her as a child. (*Id.*)
- Minor Victim 3 ("MV3") – When she was 15 years old, MV3 met Hernandez through a social media application. (*Id.* at JH-000147.) Hernandez told her he was 17 or 18 years old. (*Id.*) Hernandez asked MV3 to send him nude pictures. On one occasion, Hernandez picked MV3 up from a friend's party. (*Id.* at JH-000146.) Hernandez asked MV3 to have sex in his car. (*Id.*) Though MV3 is trying to forget the details of the experience, she believes he may have been filming them because he kept moving his phone around. (*Id.*) When she asked, Hernandez lied, claiming he was just using the flashlight feature on his phone. (*Id.*)

² The case agent's reports reference Minor Victim 2 or MV2. This was the second victim identified in the course of the criminal investigation. MV2 is not Minor 2 as identified in the Indictment. As referenced above, *see supra* n.1, Minor 2 in the Indictment is identified as Minor Victim 4 or MV4 within the investigative reports.

- 1 • Minor Victim 5 (MV5) – MV5 met Hernandez through meetme.com. (*Id.* at JH-000151.)

2 As with the other girls, Hernandez claimed to be 17 years old. (*Id.*) The two met on

3 three occasions and engaged in oral sex, often in the backseat of Hernandez’s car. (*Id.*)

4 On at least one occasion, Hernandez filmed this. (*Id.*) The last time the two met in

5 person, Hernandez pressured MV5 to have vaginal sex. (*Id.* at JH-000152.) MV5

6 resisted, and Hernandez ended the encounter. (*Id.*) Afterwards, when MV5 told

7 Hernandez that she was upset by what happened, Hernandez threatened the girl, claiming

8 he would “mess up her life” if she did not leave him alone. (*Id.*)

9 • Minor Victim 6 (“MV6”) – MV6 met Hernandez through an online website. (*Id.* at JH-

10 000156.) The first time the two met in person, Hernandez took MV6 to a hotel to engage

11 in oral sex. (*Id.* at JH-000157.) On other occasions, Hernandez brought MV6 to his

12 home. (*Id.* at JH-000158.) MV6 was initially unaware that Hernandez taped them

13 having sex. (*Id.* at JH-000157.) Hernandez told her that he wanted the recordings to

14 watch later. (*Id.* at JH-000158.) He told MV6 that he had filmed other “ex-girlfriends”

15 and that he kept the recordings in case anyone “messed with him.” (*Id.*) When MV6

16 asked if he would ever use the recordings against her, he threatened, “If it ever came to

17 it.” (*Id.*) Hernandez manipulated MV6 by giving her money for things such as prom

18 dress in exchange for sex. (*Id.* at JH-000162.) On a few occasions, MV6’s sister asked

19 to borrow money from Hernandez. On these occasions, Hernandez demanded oral sex

20 from MV6, saying she “owed him” (*Id.*)

21 **D. Possession and Distribution of Child Pornography**

22 In addition to Hernandez’s contact offenses, he possessed and distributed child pornography.

23 Law enforcement initially identified Hernandez through an international investigation into individuals

24 sharing child pornography through social media applications. (PSR ¶¶ 6-10.) On at least three

25 occasions, Hernandez sent several videos of child pornography to a group of approximately 40 people

26 through the application. (*Id.*) These videos involved children as young as three to five years’ old. (PSR

27 ¶ 10.)

28 Hernandez admitted having a sizeable cache of child pornography on his electronic devices.

(PSR ¶ 15.) On one device alone, forensic examiners identified over 5,700 images of child pornography. (*Id.*) Hernandez’s collection includes particularly graphic videos of child abuse involving toddlers and bestiality. (*Id.*)

III. SENTENCING GUIDELINES CALCULATION

The Plea Agreement in this case outlines the Sentencing Guidelines calculation contemplated by the parties. (Dkt. 23, Plea Agreement ¶ 7.) Probation agreed with those calculations at the time it issued the preliminary PSR. Subsequently, Probation disagreed with the parties’ calculation in the final PSR. Probation’s view of the Guidelines differs in two fundamental ways. First, Probation does not include a five-level enhancement for conduct constituting a “pattern of activity involving the sexual abuse or exploitation of a minor” (U.S.S.G. § 2G2.2(4)(B)) in its calculation of the appropriate offense level for Possession of Child Pornography (Count 7). Second, it instead added a Chapter Four enhancement for conduct constituting a “pattern of activity involving prohibited sexual conduct” (U.S.S.G. § 4B1.5(b)(1)), which increases the overall offense level after considering the grouping analysis. The effect of these two changes results in an Adjusted Offense Level of 41 (as opposed to 37, as set forth in the plea agreement).

Following the issuance of the final PSR, counsel for Hernandez noted that change violates Rule 32 of the Federal Rules of Criminal Procedure, which requires notice to parties of Probation’s Guidelines calculation and provides parties with an opportunity to submit objections. The government proposed continuing sentencing to allow Hernandez the ability to make a formal objection to Probation’s calculations. It appears that Hernandez anticipates going forward with sentencing as scheduled next week. The government takes no position on the final calculation. The government’s sentencing recommendation honors its obligations under the plea agreement, which requires the government to recommend the low-end of the Guidelines *as calculated in the Plea Agreement*. (Dkt. 23, Plea Agreement ¶ 23.)

IV. SENTENCING RECOMMENDATION

The Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin by calculating the correct sentencing range under

1 the Sentencing Guidelines. *Id.* The Guidelines are “the ‘starting point and the initial benchmark,’”
2 *United States v. Ellis*, 641 F.3d 411, 415 (9th Cir. 2011) (quoting *United States v. Kimbrough*, 552 U.S.
3 85, 108 (2007)), and the Court should “remain cognizant of them throughout the sentencing process.”
4 *United States v. Gall*, 552 U.S. 38, 50 n.6 (2007). After determining the appropriate Guidelines
5 calculations, the Court should then evaluate the sentence for substantive reasonableness in light of the
6 factors set out in Section 3553(a). *Carty*, 520 F.3d at 991-93. Here, the most important considerations
7 are the nature and circumstances of the offense and the need to protect the public from further crimes.
8 18 U.S.C. §§ 3553(a)(1), (a)(2)(A), (C).

9 The seriousness of the conduct here speaks for itself. Hernandez preyed on young, vulnerable
10 girls. His actions were deliberate and tactical. He lied about his age, knowing that the girls may not
11 communicate with him if he revealed his true age initially. He groomed them by speaking with them
12 online and gaining their trust. And then he met them in person where, often on the very first meeting, he
13 had sex with the girls and filmed it.

14 As Hernandez himself told the girls, he filmed their sexual encounters for two reasons: one, to be
15 able to re-watch them later for his own sexual gratification, and two, as an insurance policy should the
16 girls ever consider reporting him to the police. With respect to the first reason, as Congress and courts
17 have noted, each time a perpetrator watches a video of child pornography, they re-victimize the child
18 used to make the video. Even if Hernandez did not distribute the videos he took, he recorded them so he
19 could repeatedly watch them himself. With respect to his second reason, Hernandez contemplated
20 potentially distributing the videos as retaliation if necessary. When a minor implored him to delete the
21 images he had of her, Hernandez refused, hanging those images over the girl’s head. (Paidipaty Decl.,
22 Ex. A, Reports of Investigation at JH-000140-41.) He admitted keeping videos of “ex-girlfriends” in
23 case anyone messed with him. (*Id.* at JH-000158.) Social media and the threat of online shaming
24 empowers perpetrators like Hernandez at the expense of vulnerable girls.

25 As demonstrated by his need for “protection” from exposure, Hernandez knew his actions were
26 not just wrong, but criminal. He took great efforts to conceal his illicit “relationships” by taking the
27 girls to hotel rooms or having sex with them in the back of his car. He refused to meet one of the
28 minor’s friends in fear of being outed and of facing legal consequences. (*Id.* at JH-000056.)

Hernandez's methodically catalogued file folder system exemplifies his deliberate conduct. Strikingly, the contents of the folders demonstrate not only that Hernandez knew the girls were underage, but that he sought to confirm their underage status. The folders contained documents ranging from images of a minor's birth certificate to images of a minor's high school identification card. (*See id.* at JH-000050.) His obsession with the girls' ages shows that he specifically pursued a certain teenage subset.

Notably, Hernandez targeted teen girls who were particularly vulnerable to the overtures of a man who gave them attention. At least two of the victims suffered a prior instance of child molestation in their past. Another victim asked Hernandez for money, which he gave her in exchange for sex. These victims require the Court to hold Hernandez accountable for his actions.

Beyond Hernandez's criminal sexual conduct with the nine minor victims, he possessed thousands of images and videos of child pornography, and distributed some of these images. His disregard for the welfare of children is clear.

Taken together, Hernandez's actions warrant a substantial custodial sentence. Based on his admission to producing child pornography, Hernandez faces a high mandatory minimum sentence of 180 months. A sentence at the mandatory minimum should be reserved for the least culpable defendant. In light of the numerous girls that he victimized, the videos that he made, the threats that he issued, and the child pornography that he possessed and distributed, Hernandez is far from the least culpable defendant. His conduct warrants a sentence of 210 months' imprisonment.

V. CONCLUSION

The government respectfully asks this Court to impose a sentence of 210 months' incarceration, followed by ten years of supervised release pursuant to the conditions outlined in the PSR, and a mandatory \$200 special assessment.

DATED: April 18, 2019

Respectfully submitted,

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_____/s_____
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